



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The tenants attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend and did not submit any documentary evidence.

The tenants were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The tenants stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via email with the landlord's consent on May 22, 2021. I accept the undisputed affirmed evidence of the tenants and find on a balance of probabilities that the landlord was sufficiently served as per section 71 of the Act.

I note for the record that the tenants provided a lot of direct testimony regarding a flood that took place. The tenants provided conflicting testimony that they had moved out of the rental premises and that they did not move out of the rental premises. The tenants were repeatedly asked if they had move out of the rental premises but failed to answer the question. The tenants did note during that the hearing that the tenant, B.P. was recovering from surgery and was not organized or prepared for the hearing.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants stated that they were served with a 10 Day Notice to End Tenancy for Unpaid Rent dated May 2, 2021 with an effective end of tenancy date of May 12, 2021. The 10 Day Notice states that the tenants failed to pay \$2,200.00 in rent that was due on May 1, 2021 and \$120.56 in unpaid utilities after a written demand was given on April 8, 2021.

The tenants disputed the landlord's notice stating that they are not in any rental arrears.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I find that the landlord has failed to meet her burden of proof to show that the tenants owed rent or utilities as detailed in the 10 Day Notice dated May 2, 2021. I reached this conclusion based on the landlord's lack of attendance and the lack of any submitted documentary evidence or submissions regarding the rent and utility arrears.

Conclusion

The tenants' application to cancel the 10 Day Notice dated May 2, 2021 is granted. The tenancy shall continue.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 16, 2021